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JUN 18 1971

ROBERT SEEVER, CL

IN THE

Supreme Court of the United States

October Term, 1970.

No. ~~558~~

70-6

NELLIE SWARB, et al.,

Appellants,

v.

WILLIAM M. LENNOX, et al.,

Appellees.

On Appeal From the United States District Court for the
Eastern District of Pennsylvania.

**MOTION OF THE PENNSYLVANIA BANKERS
ASSOCIATION FOR LEAVE TO FILE BRIEF
AS AMICUS CURIAE ON BEHALF
OF APPELLEES' POSITION.**

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1970.

No. 538.

NELLIE SWARB, ET AL.,

Appellants,

v.

WILLIAM M. LENNOX, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**MOTION OF THE PENNSYLVANIA BANKERS
ASSOCIATION FOR LEAVE TO FILE BRIEF
AS AMICUS CURIAE ON BEHALF
OF APPELLEES' POSITION.**

The Pennsylvania Bankers Association hereby respectfully moves this Court for leave to file a brief in this case as *amicus curiae* on behalf of appellees' position in support of the Constitutionality of the Pennsylvania confession of judgment practice which is challenged by appellants and in support of appellees' contentions that the court below did not err in otherwise upholding the Pennsylvania confession of judgment practice as applied to certain classes of debtors.

A. Nature of Applicant's Interest.

The Pennsylvania Bankers Association (hereafter "Association") is a Pennsylvania non-profit corporation whose membership is comprised of over 450 national, state and private banks and trust companies in the Commonwealth of Pennsylvania. The purposes of the Association include to protect and promote the Pennsylvania banking system.

The member banks of the Association presently have outstanding thousands of real estate and other bank loans to individuals which are secured in whole or in part by bonds and warrants of attorney accompanying mortgages, by judgments entered of record on the basis of confession of judgment clauses and by other financing documents which contain confession of judgment clauses based upon the applicable Pennsylvania statutes being challenged by appellants in this appeal. If the Pennsylvania confession of judgment practice is declared unconstitutional on its face by the Court as appellants urge, the security interests, judgments and creditors' remedies of the member banks with respect to said loans will be adversely affected by the elimination of the confession of judgment either as a security device or as a remedial procedure. Also, the validity of said bonds and warrants of attorney and other financing documents as a whole may be called into question or their effectiveness impaired as respects other remedies contained therein simply because said documents contain in part allegedly unconstitutional confession of judgment clauses. (See Motion Re Clarification of Temporary Stay Order Dated April 21, 1971 filed with the Court by certain banks and title insurance companies.)

B. None of the Appellees of Record Will Adequately Present the Constitutional and Other Arguments in Favor of Upholding the Pennsylvania Confession of Judgment Practice in Whole or in Part.

The named defendants in the case are the Sheriff of Philadelphia County and the Prothonotary of the Court of

Common Pleas of Philadelphia County. The Philadelphia City Solicitor's office, by Theodore H. Lunine, Esquire, has advised counsel for the Association that the named defendants seek only to receive a clear direction from the Court as to whether or not they should execute on judgments entered by confession. They are neutral as to the merits.

The Commonwealth of Pennsylvania, by the Attorney General, originally took the position in the court below that the applicable statutes were constitutional. On appeal, the Attorney General of Pennsylvania originally took the position that the Commonwealth was a nominal defendant and did not intend to participate. Thereafter, two of the attorneys who had represented appellants in the court below and on appeal to this Court in the filing of the appeal and the jurisdictional statement, Peter W. Brown, Esquire and Joel Weisberg, Esquire, were appointed Deputy Attorney General and Special Assistant Attorney General respectively and took over the active handling of this case on behalf of the Attorney General's office and the Commonwealth. Thereafter, the Commonwealth changed its position and is now actively supporting the *appellants'* position on appeal.

The burden of the defense in the court below was primarily carried by the intervening defendants, Mid-Atlantic Finance Association, an association of finance companies. The finance companies advised the Court that they could no longer underwrite the costs involved in the appeal to the United States Supreme Court and sought permission to withdraw. The Court requested the attorneys for the finance companies to file a motion to dismiss the appeal, which the attorneys did at their own personal expense and so advised the Court. Counsel for the finance companies, Philip C. Patterson, Esquire has advised the Association that any continued participation in this appeal by his firm is at their own personal expense, that they are not sure whether they will file a brief on the merits and if they do, it will be very short and limited.

It is clear that there are no appellees who have the inclination and the resources to adequately present the appellees' position in this appeal.

C. The Attorney General of the Commonwealth of Pennsylvania Has Withheld Consent to the Association Adequately Briefing the Constitutional and Other Issues Raised in This Case.

Peter W. Brown, Esquire, formerly one of the attorneys for the appellants, and now Chief of Civil Litigation for the Attorney General of the Commonwealth of Pennsylvania, has refused to consent to permit the Association to file an *amicus curiae* brief in support of the appellees' position with the exception that Mr. Brown did consent to permit the Association to brief only the limited questions of whether the confession of judgment is constitutional as applied to individuals earning over \$10,000 and whether the confession of judgment is constitutional as applied to bonds and warrants of attorney accompanying mortgages. But the appeal raises a more fundamental and far-reaching issue of the constitutionality of the confession of judgment statutes on their face as well as subsidiary issues relating to the correctness of the ruling of the court below which are argued extensively in the brief of appellants and the brief of *amicus curiae* on behalf of appellants (to which the Attorney General did not object). The limitation which Mr. Brown unilaterally¹ seeks to impose upon the Association would so emasculate its brief as to effectively prevent a complete presentation to the Court of all the arguments in favor of upholding the Pennsylvania confession of judgment practice, either in whole or in part.

As noted above, there are no appellees of record who will actively participate in this appeal. Unless *amicus curiae* is permitted to present the appellees' side of the case to the Court, an important constitutional question may well be decided without effective presentation of one side of the case.

1. The other parties have orally consented to the Association filing an *amicus curiae* brief.

WHEREFORE, Pennsylvania Bankers Association prays
your Honorable Court for leave to file its brief as an *amicus*
curiae.

Respectfully submitted,

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